

**COPY**

MAR. 13 2006

BY REGISTERED MAIL

J. B. Brass of Canada
32 Stormont Avenue
Toronto, Ontario M5N 2B9

Attention: Mr. R.L. Gerendasi

BN: 86442 6911 RR0001
File #: 3019927

SUBJECT: Notice of Intent to Revoke
J.B. Brass of Canada

Dear Mr. Gerendasi:

I am writing to you further to our letter dated September 19, 2005 (copy attached) and our telephone conversation of November 16, 2005, in which you were invited to submit representations to us as to why the Minister of National Revenue should not revoke the registration of J.B. Brass of Canada (hereinafter, the "Charity") in accordance with subsection 168(1) of the *Income Tax Act* (hereinafter, the "Act").

We have reviewed your written response of November 4, 2005 and have the following comments:

Charitable Activities

The audit conducted by the Canada Revenue Agency (hereinafter, "CRA") had identified that the Charity had not maintained adequate books and records to substantiate that funds were distributed for charitable purposes. The Charity did not provide documentation to support that the applicants receiving funds were poor, as the organization does not maintain its means test to determine if applicants are living below poverty levels. The Charity performs verification of the applications and applicants orally with personal contact references maintained in the areas where the applicants originate. Personal knowledge by a third party of the applicants does not constitute sufficient evidence that the funding was made to relieve poverty.

.../2

A review of the documents provided revealed that funding was granted for a variety of reasons, many of which are not in accordance with the Charity's constitution or considered charitable. Those grants are considered acts of private benevolent and the courts do not accept acts of private benevolence as charitable as they lack the necessary element of public benefit.

Your representation of November 4, 2005 states that the Charity undertakes to document every transaction and follow the strict guidelines that were suggested by the auditor. This requirement was reiterated during a telephone conversation between the Charity and CRA on November 16, 2005. As of March 13, 2006, the Charity had not provided CRA with any documentation that the above undertaking has been implemented.

We therefore conclude that, for each of the reasons mentioned in our letter of September 19, 2005, J.B. Brass of Canada does not meet the requirements of a charitable organization under subsection 149.1(1) of the Act.

Consequently, I wish to advise you that, pursuant to the authority granted to the Minister in subsection 168(1) of the Act, and delegated to me, I propose to revoke the registration of J. B. Brass of Canada. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication in the *Canada Gazette* of the following notice:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d) and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

| File Number | Business Number | Name |
|--------------------|------------------------|--|
| 3019927 | 86442 6911RR0001 | J.B. Brass of Canada Toronto, Ontario |

Should you wish to appeal this notice of intention to revoke the charity registration in accordance with subsection 168(4) of the Act, you are advised to file a Notice of Objection within 90 days from the mailing of this letter. This notice is a written statement that sets out the reasons for the objection and all the relevant facts. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
25 Nicholas Street
Ottawa, ON K1A 0L5

Consequences of a Revocation

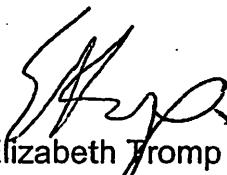
As of the date of revocation of the registration of J.B. Brass of Canada, which is the date upon which the above-noted notice is published in the *Canada Gazette*, J.B. Brass of Canada will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**.

Additionally, the Charity may be subject to tax pursuant to Part V, section 188 of the Act. For your reference, I have attached a copy of the relevant provisions of the Act (Appendix "A") concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

I wish to advise you that pursuant to subsection 150(1) of the Act, a return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) shall without notice or demand therefore, be filed with the Minister in prescribed form containing prescribed information.

Additionally, by virtue of subsection 188(1) of the Act, the Association will be required to pay tax within one year after the effective date of revocation. The revocation tax is calculated on prescribed form T-2046, "*Tax Return Where Registration of a Charity is Revoked*". The return must be filed and the tax must be paid on or before the day that is one year after the effective date of revocation. Form T-2046 along with the related Guide are also attached for your information.

Yours sincerely,



Elizabeth Tromp
Director General
Charities Directorate

Attachments:

- Our letter dated September 19, 2005
- Appendix "A"- Relevant provisions of the *Income Tax Act*
- Form T-2046, "*Tax Return Where Registration of a Charity is Revoked*"
- Guide related to Form T-2046

J. B. Brass of Canada
32 Stormont Avenue
Toronto, ON
M5N 2B9

Attention: R. L. Gerendasi

September 19, 2005

Dear Mr. Gerendasi,

Re: Charitable Registration Number 86442 6911RR0001
Review of Books and Records for the fiscal periods ending 2002-12-31 and 2003-12-31

This letter is further to an audit of the books and records of account of J. B. Brass of Canada on (hereinafter, "J. B. Brass") for the fiscal periods ended 2002-12-31 and 2003-12-31, which was conducted by a representative of the Canada Revenue Agency (hereinafter, the "CRA"). The results of the audit indicate the organization has contravened certain provisions of the *Income Tax Act* (hereinafter, the "Act") or its Regulations.

This review has raised serious concerns about the organization's compliance with certain provisions of the *Act*. In order for a registered Canadian charity to retain its registration, it must at all times comply with the provisions of the *Act* applicable to registered charities. If a particular registered charity does not comply with these provisions, the Minister of National Revenue (the *Minister*) may revoke that charity's registration in a manner described in subsection 168 of the *Act*.

The balance of this letter describes how the Canada Revenue Agency considers that the organization contravened the *Act*.

Charitable Activities:

A registered Canadian charitable organization must devote all of its resources to its own charitable activities so as to further charitable purposes in a manner consistent with the *Act*. The term "charitable" is not defined in the *Act*. Therefore, it is necessary to refer to the principles of common law to determine whether a particular purpose or activity is charitable.

Charitable purposes have been categorized by the courts under the four following headings: the relief of poverty, the advancement of education, the advancement of religion and, other purposes

beneficial to the community as a whole in a way which the law regards as charitable. This latter category merely identifies an additional group of specific purposes that have been held charitable at law rather than qualifying as charitable any and all purposes that provide a public benefit.

Aside from showing through documented evidence and proper books and records that it undertook charitable activities in furtherance of charitable purposes, an organization must demonstrate that it operated in compliance with the *Act* at all times. This requires, among other things, for an organization to show that the activities it undertakes benefit only proper objects of charity considering the relief offered. For instance, an organization relieving poverty must show that the beneficiaries of its programs in fact suffer from conditions associated with poverty.

The objects of J. B. Brass as stated in its constitution are: 1) To provide relief of poverty by assisting persons living below the minimum poverty levels based on the size of their families and their special needs if any; 2) To operate and maintain public food banks and public living quarters for poverty stricken persons; 3) To establish, provide and operate non-profit residential accommodations and incidental facilities thereto for persons of low income, senior citizens and the disabled; 4) To provide and maintain a scholarship fund for needy and above average scholars to enable them to continue their studies at a recognized educational institution.

For the fiscal years in question, the audit identified the major activities stated to be undertaken by J. B. Brass. We will examine each of these activities as stated in J. B. Brass's constitution in turn to determine if the activities were undertaken by J. B. Brass and to see if the resources devoted to these programs should be considered as resources devoted to charitable activities carried on by the organization itself. The organization also undertook a variety of activities, which are not stated in its constitution and for which no constitutional amendments have been provided. We will examine each of those activities below to determine if they are charitable in nature and to see if resources devoted to these programs should be considered resources devoted to charitable activities.

- 1) To provide relief of poverty by assisting persons living below the minimum poverty levels based on the size of their families and their special needs if any;

J. B. Brass's constitution states, "Applications will be accepted for social assistance from single parents, seniors, and large needy families who meet the organization's means test." Applicants are to meet with J. B. Brass's board of directors and provide supporting documentation to verify the information contained on the application form. J. B. Brass then reviews the applications and contacts the applicant's references. The representative mentioned applicants are screened based on income per year, number of dependents and type of employment compared to family needs.

J. B. Brass failed to provide the organization's means test, copies of documentation provided by the applicants to verify application and minutes of in-person meetings with applicants and in-person or telephone meetings with the applicant's references. The organization does not hold formal board meetings and does not prepare minutes of any meetings or conversations held. Further, the representative indicated Mrs. C. Berkowitz, the bookkeeper, conducts the majority of the organization's operations. Mrs. C. Berkowitz conducts the meetings with the applicants and reviews the documentation provided by the applicants at the in-person meetings. Rarely are bank statements or tax returns provided by the applicants' to prove income earned per year or savings as the applicants do not have bank accounts or filed tax returns. Notes are made on the application forms prepared by the applicants and contact with the list of people in New York, Baltimore, Jerusalem and Northern Israel to verify the authenticity of the application are performed by Mrs. C. Berkowitz. The approval or denial of applicants is at the discretion of Mrs. C. Berkowitz as is the amount of aid received. Mr. L. Gerendasi is available for consultation if needed.

The organization does not appear to maintain a benchmark for reviewing applications, as most applications are incomplete and the representative stated the board of directors performs the verification of applications and applicants orally with personal contact references maintained in the areas where applicants originate. The mere fact that an organization's Board of Directors, or the person approving applications, may have had personal knowledge of the applicants does not constitute evidence that the funding was being made to relieve poverty. Personal knowledge cannot be a substitute for a properly applied and documented system of selection criteria that serves to prove that a charity is in fact relieving poverty in a manner consistent with the *Act*.

As J. B. Brass's financial statements and accompanying documentation do not segregate or identify the total expenditures incurred for relief of poverty, we cannot determine the amount of funds spent. Any funds received and distributed for relief of poverty would not be considered resources devoted to a charitable activity carried on by J. B. Brass itself.

The inadequacy of the Charity's books and records and failure to maintain books and records in English or French will be discussed below in the section entitled Books and Records.

- 2) To operate and maintain public food banks and public living quarters for poverty stricken persons;

The audit did not reveal any evidence to indicate the organization operated or maintained a public food bank or public living quarters for poverty-stricken persons.

J. B. Brass reports food banks were provided to needy families in Ontario in 2002 and 2003 on the Registered Charity Information Return, whereas the representative for the organization

indicated a soup kitchen was operated in Israel and no food banks were operated within Canada. The organization did not provide documentation to substantiate J. B. Brass's operation and maintenance of a soup kitchen in Israel. The soup kitchen is to provide food only and does not provide any public living quarters.

There was no evidence to indicate the soup kitchen was not operated under an agency agreement and the board of directors did not conduct periodic visits. No agency agreement, name and location of the soup kitchen or name of the agent or reports were provided. The audit also failed to uncover documentation to support any periodic visits taken by the board of directors or reports prepared by the directors on the status of the soup kitchen.

The use of agency agreements and operating outside Canada will be discussed below in the section entitled Activities Outside Canada and Gifts to Non-Qualified Donees.

As J. B. Brass's financial statements and accompanying documentation do not segregate or identify the total expenditures incurred for operation and maintenance of a soup kitchen in Israel nor can we determine the amount of funds spent. Any funds received and distributed for operation and maintenance of a soup kitchen would not be considered resources devoted to a charitable activity carried on by the charity itself.

- 3) To establish, provide and operate non-profit residential accommodations and incidental facilities thereto for persons of low income, senior citizens and the disabled;

J. B. Brass states in its constitution "group homes and individual rooms will be made available (if required) to the homeless on a temporary basis."

Mr. Gerendasi stated in our meeting of July 5, 2005 that two apartments owned by Bikur Cholim are made available to J. B. Brass and persons referred by J. B. Brass. He stated that one apartment is located near a hospital and allows visiting families to stay close to their relatives undergoing treatment at the hospital. The other facility provides short-term accommodations for family members accompanying relatives to Canada who are receiving medical treatment. It does not appear the residents of the apartments are homeless or of limited means nor do the residents appear to be scrutinized for immediate needs or financial status. The representative indicated the persons using the facilities were referred to the organization based on personal contacts. Personal contacts cannot be a substitute for a properly applied and documented system of selection criteria that serves to prove that a charity is providing public living quarters to poverty stricken persons.

Mr. Gerendasi also stated Bikur Cholim handles the vacancies and scheduling as well as the maintenance for the apartments. J.B. Brass does not hold a lease for the two properties and J. B. Brass did not provide an agency agreement or contract indicating the other charity was providing

accommodations on the direction and control of J. B. Brass of Canada. Therefore J. B. Brass of Canada does not provide any sort of accommodation or incidental facilities. The accommodation provided by Bikur Cholim also does not meet the objective of providing group homes and individual rooms to the homeless, senior citizens or the disabled.

The organization must retain direction and control over the use of its resources even if the charitable activities are being carried out by another organization. The organization must be able to demonstrate at all times, through adequate books and records, that the organization was devoting resources to charitable activities as opposed to transferring resources to another organization.

As J. B. Brass's financial statements and accompanying documentation do not segregate or identify the total expenditures incurred for establishing, providing and operating accommodations and incidental facilities, we cannot determine the amount of funds spent. Any funds received and distributed for accommodations provided by another organization, unless by agency agreement, would not be considered resources devoted to a charitable activity carried on the by the charity itself.

- 4) To provide and maintain a scholarship fund for needy and above average scholars to enable them to continue their studies at a recognized educational institution.

The audit failed to provide details concerning the scholarship fund for needy and above average scholars. The organization does not appear to maintain a scholarship fund and did not provide documented details on the selection criteria of applicants.

As per J. B. Brass's constitution "Preference will be given to students involved in research and post graduate work in a recognized educational institution. The criteria for the distribution of scholarship funds will be based on scholastic achievements of the students and also on their financial needs. The organization will scrutinize each applicant to see if they meet the organization's means test, and evaluate the applicant's grades in respect of their scholastic achievements. The selection process will then take place based on the final decision of the directors of the organization."

The 2002 and 2003 Information Returns indicate "scholarships were provided to assist students in their studies" meanwhile no documentation was provided to verify the application for and granting of scholarships within 2002 and 2003. The audit did not reveal the organization's means test to which applicants would be scrutinized. Mr. Gerendasi indicated in our meeting of July 5, 2005 that scholarships are provided to students who cannot afford tuition. J. B. Brass would then pay a portion of the student's tuition fees directly to the educational institution of the approved

applicant. The payment of tuition is for students outside of Canada only. The audit did not reveal any tuition invoices paid by J. B. Brass on behalf of a scholar.

Where a charity administers scholarships to students attending a foreign school or university, the following procedures are necessary to show that the charity maintained full direction and control over its resources:

- Scholarships should be awarded on the basis of pre-established selection criteria;
- There should be assurance that the student actually attended the school for which they received the scholarship by a statement of attendance provided by the school;
- A receipt should be provided by the student, for which the scholarship was intended, that they received the funds;
- In order to support that scholarship funds were used for their intended purpose, the charity should retain source documents, (receipts, vouchers, cancelled cheques), pertaining to such expenditures.

It is the CRA's view that this type of reporting mechanism is necessary for the charity to clearly demonstrate that it maintains an adequate level of control and accountability over the use of its funds. These reports would have to be kept with the charity's other records and books or account at the address recorded with the CRA.

As J. B. Brass's financial statements and accompanying documentation do not segregate or identify the total expenditures incurred for scholarships, we cannot determine the amount of funds spent. Any funds received and distributed for scholarships would not be considered resources devoted to a charitable activity carried on by the charity itself.

J. B. Brass provided copies of application forms and accompanying documentation submitted by the applicants as proof of undertaking it's stated activities. The organization retains only successful applicant's application forms. Application forms of unsuccessful applicants are not retained due to storage concerns. The application forms provided were in English and Hebrew with the majority of the applications and accompanying documentation in Hebrew. The forms asked for the purpose of the application although many forms did not specifically indicate an application being submitted for a particular activity i.e. poverty, scholarship, etc nor were application forms separated into a particular activity. The application forms or additional applicants are recorded in the organization's computerized records by applicant or "Mosad". A profile is created for each applicant identified as a Mosad Profile. A Mosad Id number and Mosad name identify each Mosad Profile.

Of the 429 Mosad Profiles provided for years 2003 and 2002, 98 profiles did not contain application forms therefore we were unable to determine the reason for application and applicability to the charitable programs carried on by J. B. Brass.

The audit revealed applications for a variety of cases many of which did not indicate relief of poverty, scholarship, etc. Of the English applications provided, the range of reasons ranged from heavy debts to wedding assistance to funds to supplement income. For example, applicant David Weiss's purpose for application is "to pay debts incurred when marrying off two children", Rochel Aryan Shapiro's purpose is "needs money to live", Rabbi Itzchok Rubinstein's purpose is to "supliment (sic) income" and Rabbi M Kovitz's purpose is "to help pay past debts and defray high moving costs and get set up in new home". These activities are not considered to be charitable as there is no public benefit inherent in assisting persons with personal debts or weddings. The activities are considered an act of private benevolence. The courts do not accept the act of private benevolence as charitable as it lacks the necessary element of public benefit.

Additionally, the audit revealed incomplete applications or missing applications.

Since J. B. Brass has not devoted substantially all of its resources to its own charitable activities or by way of gifts to qualified donees, it has failed to meet the definitional requirement paragraph 149.1(1)(a) of the *Act*. Therefore under paragraph 168(1)(b) of the *Act*, the *Minister*, may by registered mail give notice to the organization that he proposes to revoke its registration because it ceases to comply with the requirements of the *Act* related to its registration as such. For this reason, it appears to us that there are grounds for revocation of the charitable status of J. B. Brass of Canada.

Governing Documents:

In our meeting with the representative of J. B. Brass, he mentioned the organization had undertaken additional activities that are not included in the constitution of J. B. Brass of Canada nor have any amendments been made thereto. If a charity modifies its objects without consulting with us first, and if the new objects do not qualify as charitable, it is placing its status as a registered charity in jeopardy. Moreover, certain changes can affect the charity's designation.

By consulting with us first, a charity can avoid the need to further amend its objects. In addition, a charity that wants to undertake programs and activities that are different from those previously described to us, should make sure that they are within the scope of the charity's stated purposes. If the programs or activities differ from those we reviewed, they may not be charitable.

J. B. Brass engaged in obtaining and maintaining an inventory of medical equipment, used furniture and used clothing. The equipment, furniture and clothing are maintained in personal residences and are available to those in need.

The provision of furniture and clothing to relieve poverty is recognized as a charitable activity. However, J. B. Brass has not provided any evidence to indicate the goods are provided to persons to relieve poverty. Accordingly, any resources devoted to these activities are not considered to be resources devoted to charitable activities.

Activities Outside Canada and Gifts to Non-Qualified Donees:

The audit has raised serious concerns with respect to J. B. Brass's foreign activities. According to the audit, J. B. Brass has not demonstrated adequate direction and control over its foreign activities.

The *Act* permits a registered charity to carry out its charitable purposes both inside and outside Canada, in only two ways:

- It can make gifts to other organizations that on the list of qualified donees set out in the *Act*. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies and a few foreign charities.
- It can carry on its own activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

In order to give meaning and effect to the *Act*, a charity must continue to meet all of its obligations whether the activities are undertaken directly, through agency agreements or through any other arrangements. While we have never insisted on the absolute need for a written instrument, we recommend it as a means of meeting the requirements of the *Act*.

Notwithstanding the manner by which a charity chooses to meet its obligations, it must provide documentation or other tangible evidence to substantiate that it met the requirements of the *Act* with respect to the direction and control of its resources.

Since the *Act* requires a charity to show that it effectively directs and actually controls its own activities, the agency agreement that a charity puts in place and the manner that the charity implements that agreement must allow the charity to discharge its statutory obligations.

From time to time the Charities Directorate has suggested certain guidelines for agency agreements in order to help charities understand all the requirements of the *Act*. For a number of

years, we discussed these guidelines with individual charities on a case-by-case basis. As we identified a growing need in the charities sector for more information on this subject, guidelines have been made available to the public and the sector as a whole through our Internet site.

By observing these guidelines and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times. In the final analysis, the true test of whether a charity was responsible in a direct, effectual, and constant manner over its resources and activities is not shown by how well it has crafted an agreement but rather, how well it has implemented it through time. Therefore, it is incumbent upon the charity to show that it has properly implemented any agreement it claims is in place.

The existence of either a written or verbal agency agreement is only one example of evidence required to show that a sufficient principal-agent relationship truly exists. The charity through documented evidence, must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship. Thus, the charity must provide the CRA with a means of examining the internal decision making mechanisms within the charity's own structure through records, such as: minutes of board meetings; internal communications (i.e., memoranda); as well as, policies and procedures that show that the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship. In addition, the charity must provide source documentation, reports, and the various other instruments it received from its agent showing that throughout the life of the principal-agent relationship, the agent reported back to the principal in such a manner and frequency as to allow the principal to make informed decisions about the resources and projects for which the principal was responsible.

It is the CRA's view that this type of reporting mechanism is necessary for the charity to clearly demonstrate that it maintains an adequate level of control and accountability over the use of its funds. These reports would have to be kept with the charity's other records and books or account at the address recorded with the CRA.

For purposes of the *Act*, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. Allowing a non-qualified donee to take near total control of the resources of a registered charity nullifies the purpose and intent of the *Act*.

We have also attached a copy of our Guide RC4106E "*Registered Charities: Operating Outside Canada*" which includes a set of guidelines that we use to help us assess how much effective direction and actual control a registered Canadian charity exercises in greater detail.

Where an agreement exists only in verbal form, or where some of the elements outlined in the aforementioned guidelines are not explicitly expounded in a written agreement, the CRA will look at all supporting documentation as well as the conduct of both parties to ascertain whether or not the registered Canadian charity maintained effective direction and actual control through its relationship with the other organization. The registered Canadian charity must not only show that an appropriate agreement existed (written or otherwise), it must also show that the agreement was implemented in a manner that clearly demonstrates that the registered Canadian charity exercised direct, effectual, and constant responsibility for undertaking the charitable activities to which its resources were applied. In effect, the registered Canadian charity must show that it acted as the principal through the implementation of the agreement.

The audit revealed three copies of agency agreements for Chaim Flom (Mosad ID # 14), Moshe Meiselman (Mosad ID # 79) and Miriam Moskowitz (Mosad ID # 269). The agreements do not provide details on the activities to be carried out by the agents in furtherance of J. B. Brass's activities nor provide assurance that the organization is able to deliver the services required by J. B. Brass. The agency agreements do not contain the address of the agent, duration of the project, description of the specific activities to be undertaken by the agent, provision for instalment payment, provision for withdrawing or withholding instalment payments, provision for maintaining adequate books and records at an address in Canada and provision for maintaining separate books and records. Two of the agreements provided are not signed by the principal, J. Brass of Canada, signed by a witness and are not dated. These agency agreements are not sufficient to demonstrate that J. B. Brass of Canada maintains an adequate level of control and accountability over the use of its funds.

The audit revealed certain deficiencies, as there is little evidence to show that J. B. Brass had any pertinent control over its resources. A review of the documentation provided revealed significant portions of the organization's donations were distributed to persons outside of Canada and we are unable to verify the funds were being used for charitable purposes. As stated above, J. B. Brass could not provide us with any documentation related to the direction and control of the organization's resources due to the lack of board meetings and lack of recorded minutes.

The audit failed to reveal other agreements with the organizations or persons with whom J. B. Brass contracted to perform charitable activities on its behalf. The audit revealed a variety of cheques issued to persons with the notation "Agent of J Brass".

The audit revealed J. B. Brass allowed various other organizations and individuals to solicit funds for their own purposes using the J Brass of Canada name and charitable registration number. By allowing other organizations and individuals to solicit funds, J. B. Brass is not engaged in its own activities. The organizations or individuals identified include: Moshe Ben Arosh (Mosad ID # 40), Avraham Savaria (Mosad ID # 116), Uri Markowitz (Mosad ID # 249),

Rabbi Aaron David Poston (Mosad ID # 408), Chabad House Alon Mereh-Shechem (Mosad ID # 194) and Canadian Friends of Lilmod Ulelamed.

Documentation provided for Moshe Ben Arosh (Mosad ID # 40), Gabreil Ovrani (Mosad Id # 135), Avraham Savaria (Mosad ID # 116), Uri Markowitz (Mosad ID # 249) and Rabbi Aaron David Poston (Mosad ID # 408) stated, "This is to authorize _____ to solicit funds under J Brass of Canada. Please be advised that we cannot issue any receipts for cheques written to J Brass of Canada within this letter of authorization. Please be advised that receipts will only be issued for donations of ten dollars (\$10.00) or more."

Chabad House Alon Mereh-Shechem (Mosad ID # 194) documentation reads "For TAX DEDUCTIBLE DONATIONS, make check to "J Brass" (Mrs Chavie Berkowitz's organization)"

Canadian Friends of Lilmod Ulelamed documentation reads "Please make cheques payable to J Brass of Canada. Contributions of \$18.00 and up are tax deductible."

Based on the lack of documentation and tangible evidence, it does not appear J. B. Brass has maintained effective control and direction over the use of its funds and thereby, has distributed its resources to a non-qualified donee.

Pursuant to paragraph 168(1)(b) of the *Act*, the *Minister* may give notice to a registered charity that he proposes to revoke its registration where a registered charity ceases to comply with the requirements of the *Act* for its registration as such. For this reason, it appears to us that there are grounds for revocation of the charitable status of J. B. Brass of Canada.

Disbursement Quota

Registered charities are required in each year of operation to meet or exceed a disbursement quota. This quota relates to expenditures that must be made during the year and that are of a charitable nature. In the case of a charitable organization, the *Act* stipulates that this minimum annual disbursement quota is equal to eighty percent of the prior year's officially receipted donations less certain types of gifts received (paragraph 149.1(2)(b) of the *Act*). When a charitable organization fails to expend its disbursement quota in any taxation year, either on charitable activities carried on by it and by way of gifts made by it to qualified donees, the *Minister* may in the manner described in section 168 of the *Act* revoke the charitable organization's registration.

A charity is allowed by virtue of 149.1(20) of the *Act* to offset any shortfalls in its disbursement quota by applying any excesses in its disbursement quota from its immediately preceding

taxation year and 5 or less of its immediately subsequent taxation years. In order to do so, however, the charity would have to show unequivocally that all the expenditures claimed in those years were in fact charitable expenditures.

Based on the facts stated above, the expenditures recorded by J. B. Brass are not considered to be expenditures devoted to a charitable activity carried on by J. B. Brass itself as J. B. Brass has engaged in activities which have not been substantiated by documentary evidence or otherwise, it has allowed it's name and registration number to be used by various other organizations and individuals and it has made gifts to non-qualified donees.

Therefore under paragraph 168(1)(b) of the *Act*, the *Minister*, may by registered mail give notice to the charity that he proposes to revoke its registration because it ceases to comply with the requirements of the *Act* related to its registration as such. For this reason, it appears to us that there are grounds for revocation of the charitable status of J. B. Brass of Canada.

Books and Records:

The *Act*, per subsection 230(2), requires that every registered charity shall keep records and books of account at an address in Canada recorded with the *Minister* or designated by the *Minister* containing:

- Information in such form as will enable the *Minister* to determine whether there are any grounds for the revocation of its registration under the *Act*;
- A duplicate of each receipt containing prescribed information for a donation received by it; and
- Other information in such form as will enable the *Minister* to verify the donations to it for which a deduction or tax credit is available under the *Act*.

In addition, subsection 230(4) also states "every person required by this section to keep books of account shall retain:

- a) The records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and
- b) All other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books relate".

A charity is not meeting its requirement to maintain adequate books and records if it fails to exercise due care with respect to ensuring the accuracy thereof.

In addition to substantiating all costs or expenses paid out of its funds, the charity's books and records should provide documentary evidence that monies it has transferred to any agency have been applied to the conduct of activities that are charitable under Canadian law and for which the charity itself is directly and legally responsible.

The purpose of this requirement is to enable the charity to accurately provide CRA with the information required by the *Act* as well as to enable CRA to verify the accuracy of the reported information.

J. B. Brass received two letters from CRA requesting the provision of books and records. Correspondence dated March 22, 2004 requesting books and records for the period ending 2002-12-31 and correspondence dated July 14, 2005 requested books and records for the periods ending 2002-12-31 and 2003-12-31. Complete documentation as requested was not provided to CRA as of the date of this letter.

The audit indicated the books and records kept by J. B. Brass were inadequate for the purposes of the *Act*. In addition to the instances noted above, J. B. Brass did not provide a complete listing of all official donation receipts issued for the fiscal periods ending 2002 and 2003, copies of all expenditure receipts, copies of all cancelled cheques and certified cheques, copies of all agency agreements, copies of progress reports prepared by board of director members and the soup kitchen and all other forms of documentation necessary to verify the information reported per the organization's financial statements.

It was found during the audit that the organization is maintaining books and records, the application forms and accompanying documentation, in Hebrew. The charity must maintain their records in either of the two official languages of Canada-English or French. As stated in our Publication RC4108E *Registered Charities and the Income Tax Act*, a registered charity must keep adequate books and records in either English or French.

A review of the documentation provided indicates J. B. Brass is not maintaining adequate control over the books and records or segregation of charitable entities. A review of the application forms provided indicated twenty-one applications for different charitable organizations. This evidence suggests that not all of the activities, income and expenses reported by J. B. Brass belong entirely to this entity. Combined with J. B. Brass's involvement in loaning it's charitable name and registration number to other organization's, J. B. Brass may not be carrying out it's own activities.

Under paragraph 168(1)(e) of the *Act*, the *Minister* may, by registered mail, give notice to the charity that he proposes to revoke its registration because it fails to comply with or contravenes section 230 of the *Act* dealing with Books and Records. For this reason, it appears to us that there are grounds for revocation of the charitable status of J. B. Brass of Canada.

Official Donation Receipts:

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the *Act* and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

Duplicate copies of all official donation receipts were requested in our correspondence of March 22, 2004 and July 14, 2005. Copies of all official donation receipts issued were not provided; forty-nine receipts were provided. However our review of the official donation receipts provided revealed that J. B. Brass was not in compliance with *Income Tax Regulation 3501* as follows:

- The registration number assigned by the *Minister* to J. B. Brass of Canada was not recorded on official donation receipts 2555, 5148, 3396, 2722 and 2565. The registration number exhibited on the official donation receipts is of another registered charity.
- The address was incomplete on official donation receipts 2150 and 49.

Under paragraphs 168(1)(d), the *Minister* may, by registered mail, give notice to the registered charity that he proposes to revoke its registration if it issues a receipt otherwise than in accordance with the *Act* and the Regulations. For this reason, it appears to us that there are grounds for revocation of the charitable status of J. B. Brass of Canada.

Information Return (Form T3010):

Pursuant to subsection 149.1(14) of the *Act*, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a Registered Charity Information Return with the applicable schedules.

It is the responsibility of J. B. Brass to ensure that the information that is provided in its Return, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

J. B. Brass of Canada improperly completed the Information Return for the fiscal periods ending 2002-12-31 and 2003-12-31 in that many items reported were incorrectly identified or omitted. Specifically:

- Section C listed the programs carried on during the fiscal period as "Food Banks were provided to needy families in Ontario, Shelter and low rental and emergency accommodations for need was provided in two locations, Charity assistance was distributed to poverty stricken families in, Scholarships was provided to assist students in their studies and Medical equipment provided for the sick" J. B. Brass of Canada did not undertake all the activities listed within the fiscal period or engage in the activities within Ontario.
- Question C3 (2002) and C4 (2003) response indicates "No" to operating any of the programs directly or indirectly outside Canada. J. B. Brass of Canada distributes funding within the United States, Israel, England and Argentina as well as various other countries as per the representative and supporting documentation provided.
- Question C5 (2002) lists the charity's programs and approximate percentage of time and resources it devoted as:
 - A11 Family and crisis counselling, financial counselling 60%
 - A2 Food or clothing banks, soup kitchens, hostels 15%
 - A1 Housing for seniors, low-income people, and those with disabilities 15%
 - F4 Services for the sick 10%

The charity did not undertake any of the above noted programs as per supporting documentation provided in 2002 or 2003.

- Line 100 (2002) reports Total tax-receipted gifts of \$3,608,000 and Line 4500 (2003) reports Total tax-receipted gifts of \$3,808,679. The charity provided official donation receipts totalling \$30,819.54 (2002) and \$8,012.00 (2003).
- Line 101, 102 and 103 (2002) and Line 4510 (2003) do not report tax-receipted gifts and other gifts received from other registered charities. J. B. Brass received gifts from other registered charities per review of the documentation supplied.
- Line 5050 (2003) indicates \$3,821,290 Total gifts to qualified donees. The charity did not make any gifts to qualified donees.
- Section I1 (2002) indicates "No" to making direct expenditures outside Canada. The charity does make direct expenditures outside Canada to the United States, Israel, England and Argentina as well as various other countries per the representative.
- Section F1 (2003) does not indicate a dollar amount for program expenditures outside Canada.

Under paragraph 168(1)(c) of the *Act*, the *Minister* may, by registered mail, give notice to the charity that the *Minister* proposes to revoke its registration because the charity fails to file an

Information Return as and when required under the *Act* or a regulation. For this reason, it appears to us that there are grounds for revocation of the charitable status of J. B. Brass of Canada.

Filing of complete Information Return (T3010) on time:

Subsection 149.1(14) of the *Act* requires every registered charity to file a Registered Charity Information and Public Information Return, (form T3010), without notice or demand within six months from the end of each fiscal period. This return must be in prescribed form and contain prescribed information.

Our review of the organization's filing history revealed the following:

| T3010 Date | Date received | Days of lateness |
|-------------------|----------------------|-------------------------|
| 2002-12-31 | 2003-11-06 | 129 days |
| 2003-12-31 | 2004-12-06 | 159 days |

As of the date of this letter, the Registered Charity Information and Public Information Return (form T3010A) for fiscal period ending 2004-12-31 have not been filed.

Conclusion

For each of the reasons and discrepancies indicated above, it appears to us that there are grounds for revocation of charitable status of J. B. Brass of Canada.

The consequences to a registered charity of losing its registration include:

1. The loss of its tax exempt status as a registered charity which means that the charity would become a taxable entity under Part I of the *Income Tax Act* unless, in the opinion of the Director of the applicable Tax Services Office, it qualifies as a non-profit organization as described in paragraph 149(1)(l) of the *Act*;
2. Loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the charity would not be allowable as a tax credit to individual donors as provided at subsection 118.1(3) of the *Act*, or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the *Act*; and
3. The possibility of a tax payable under Part V, subsection 188(1) of the *Act*.

For your reference, we have attached a copy of the relevant provisions of the *Income Tax Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present any reasons why the Minister of National Revenue should not revoke the registration of J. B. Brass of Canada in accordance with subsection 168(2) of the *Act*, you are invited to submit your representations within 30 days from the date of this letter, October 19, 2005. If you wish to obtain an extension, please contact the undersigned. Subsequent to this date, the Director of the Charities Division will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of J. B. Brass in the manner described in subsection 168(1) of the *Act*.

If you appoint a third party to represent you in this matter, please send us a written authorization naming that individual and explicitly authorizing that individual to discuss your charity's file with us.

Should you have any questions on these matters, please contact the undersigned at (613) 957-2212 or via fax at (613) 946-7646, or write to Charities Division, 320 Queen Street, 7th Floor, Ottawa, Ontario, K1A 0L5.

Sincerely,

Holly Brant

Holly Brant
Audit Advisor
Charities Directorate
Canada Revenue Agency